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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of JERRIANNE and
JOSEPH LATOURELLE.

B170393

(Los Angeles County
Super. Ct. No. KD036919)

JERIANNE LATOURELLE,

Respondent,

v.

JOSEPH LATOURELLE,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.
Gloria White-Brown, Judge. Affirmed.

Lascher & Lascher, Denise A. Brogna for Appellant.

No appearance for Respondent.

In this appeal following marital dissolution proceedings, husband Joseph Latourelle challenges the trial court's determination of imputed income used to calculate his child support payments. We find the trial court did not abuse its broad discretion and affirm the child support order of April 11, 2003.

FACTUAL AND PROCEDURAL SUMMARY

On March 27, 1998, after approximately 13 years of marriage, wife Jerianne Latourelle petitioned for marital dissolution. The parties stipulated to pendente lite support, joint legal custody of their three children, and shared physical custody of the children. Husband requested a trial on the issue of permanent child support, and the parties submitted income and expense declarations.

Evidence at trial indicated that husband is the president of American Capacitor Corporation (ACC) and its majority stockholder. Husband owns approximately 86 percent of ACC's stock, with two other people (not wife) owning the remainder of ACC's stock. Husband also owns another company, Electron Products, which is a division of ACC. The income from Electron Products goes into ACC. And husband recently acquired another company, Rimtex Systems, which will be doing business as ACC.

According to husband's W-2 statement for 2002, his income from salary at ACC was \$26,000. One of husband's employee benefits was a company vehicle, a 1990 Cadillac.¹ Husband estimated that the total gasoline expenses paid for by the company were approximately \$60 per month, that he paid some unspecified amount for gasoline himself, and that some portion of the vehicle expenses were personal. He could not recall any specifics as to automobile repair expenses per month, but his company, ACC, paid for such repair expenses.

¹ Husband's corporation, ACC, also has a 1996 Suburban, a 1985 Corvette, a 1984 Cadillac (in wife's possession), a 1986 Chevy truck, and a 1973 Blazer. And ACC owns a one-half interest in an airplane that husband uses.

The vehicle personally owned by husband is a Honda motorcycle.

Husband further testified that he pays the principal and interest on a \$400,000 loan with Wells Fargo Bank, which is for the mortgage on the commercial property he owns but leases to ACC. Husband's monthly mortgage payments for the Wells Fargo loan are in the "mid 3,000's." ACC pays husband rent for using the property, and the "corporation pays for the taxes and the insurance" on the property. On husband's tax returns he takes a deduction for depreciation for the commercial building because he owns it personally.

At the end of the year, after husband receives monthly rent from ACC and after he pays the monthly mortgage payments on the commercial property, husband has a net deficit of approximately \$8,000 per year. Husband asserted that he agreed to such a "deal" whereby he is in a financial hole each year because the company could not afford to pay any more. Corporate income tax returns indicated that ACC had approximately \$125,000 in retained earnings and most recently has approximately \$200,000 in retained earnings. Such retained earnings have not been paid out to husband, because he deems that money as necessary for operating expenses and to capitalize the company.

Husband filed with the court several income and expense declarations and annexed several income tax returns. Husband's 1998 tax return showed a gross annual income of \$32,836, net income of \$23,786, and an itemized deduction of \$9,050 (schedule E--rental real estate, etc.). His 1999 tax return showed gross annual income of \$33,192, net income of \$30,377, and an itemized deduction of \$2,815 (schedule E--rental real estate, etc.). His 2000 tax return showed gross annual income of \$33,435, net income of \$27,312, and an itemized deduction of \$6,123 (schedule E--rental real estate, etc.).

Husband's several income and expense declarations from 1998 through 2003 all reflected net monthly expenses exceeding monthly income. Husband's income and expense declaration filed during trial on April 11, 2003, showed his monthly income at \$1,889, his monthly net disposable income at \$1,829, and his monthly expenses at \$3,272. He asserted that he makes up for his income deficiency by on occasion

borrowing money from family, though he testified he could not give even an estimate as to how much he had borrowed during the calendar year 2002.

Husband also explained that he received from his company in the nature of a loan approximately \$400 to \$600 per month for personal expenses. ACC lent husband money, but he does not make payments on this loan because the payments are offset by deferred interest income that ACC owes him.

As reflected in the trial court's minute order of April 11, 2003, the court found \$7,000 income attributable to husband as income, including \$100 attributable to him from payments for repair and maintenance of his vehicle. As revealed in discussions with counsel at the conclusion of the hearing, part of the income attributable to husband included \$3,670 per month in mortgage payments, \$140 automobile gasoline and maintenance, and \$2,000 in actual wages.

The figures entered into the "DissoMaster" standard program for determining child support included for husband \$2,000 wages and salary, and \$4,310 for other taxable income. Based in part on such figures and as calculated by the standard program, the court ordered husband to pay child support in the amount of \$1,004 per month, from July 1, 2001, to March 31, 2003, and thereafter to pay \$716 per month. The court did not enter any order for spousal support for wife, who had monthly wages and salary of \$2,655 plus other nontaxable income of \$400 per month.

DISCUSSION

The trial court's determination of child support is reviewed under the abuse of discretion standard. (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 825.) The trial court's discretion must be exercised consistent with applicable law, taking into consideration the circumstances of the parties and the financial ability of the supporting spouse. (*Ibid.*)

Husband contends that the trial court's child support order should be reversed, since it was in part erroneously based on findings of \$100 as imputed income for auto repair and \$3,670 as imputed income for mortgage payment. The contention is unavailing.

Imputed income from automobile repair expenses

Regarding the trial court's imputed income of \$140 per month for vehicle gasoline and maintenance, husband asserts on appeal that he testified that ACC paid \$40 in gasoline per month and "did not testify that ACC paid for his personal auto repair." Husband thus urges the record does not support the trial court's imputing \$100 in repair expenses to him as income.

The reporter's transcript, however, indicates that husband testified the company paid approximately \$60 per month for gasoline, and that husband pays some unspecified amount of the gasoline expenses himself. Husband estimated that approximately 40-45 percent of his automobile usage is commuting to work and the rest traveling from his principal place of business to other sites. Husband could not "recall any expenses in the last 15 months" for auto repair and did not know how much was spent per month for auto repair. But husband acknowledged that *ACC does pay for repairs* on his 1990 Cadillac, that the vehicle is "maintained by the company," and that some portion of his vehicle expenses is personal.

Accordingly, in view of the above facts, we find no abuse of discretion in the trial court's imputing to husband the reasonable sum of \$140 per month for automobile gasoline and maintenance for the 1990 Cadillac used by him and maintained by the company.

Imputed income for mortgage payments on property husband owned but rented to ACC

Husband asserts that including as imputed income his mortgage payments on the property he owned but rented to ACC was error because it was an expense and not income, it was not a statutorily recognized source of income (see Fam. Code, §§ 4058, 4059), and it was contrary to the Internal Revenue Code's definition of income.

It is uncontested that husband received the money to pay the mortgage from the rents received from ACC. The trial court stated that it had discretion "to impute to [husband] the income as indicated for the mortgage payments that are paid directly from his personal account." Viewed in its proper perspective, what the trial court did was to impute as income not the mortgage payments made, but rather the income akin to rent

paid by ACC to husband, which was the equivalent amount of the mortgage payments made. Under Family Code section 4058, subdivision (a)(1), “rents” specifically may be included in determining a parent’s gross income.

Husband also complains that the trial court did not deduct from rental income any expenses incurred, such as property taxes, insurance, mortgage payments, and depreciation -- which would have shown a deductible loss. However, as indicated by husband’s federal tax returns, which are presumed correct (*In re Marriage of Loh* (2001) 93 Cal.App.4th 325, 332), the real estate losses (on Schedule E) were already taken into consideration. The rental real estate expenses complained of were used, in fact, to reduce husband’s total income.

Thus, putting aside husband’s testimony that the corporation pays for the taxes and insurance on the property, husband’s Form 1040 for his 2000 federal income tax return, for example, establishes the use of the expenses complained of as deductions. For that taxable year, husband’s wages and salary of \$26,000 and his taxable interest of \$7,435 were reduced by real estate related losses of \$6,123, for a reduced total income of \$27,312. The real estate losses thus served to reduce husband’s income, and there is no indication his reduced income was not properly reflected in the DissoMaster figures upon which child support payments were calculated.

Husband also asserts that imputed income from the corporation for payment of his mortgage did not factor in the tax consequences or corresponding income tax that husband would have had to pay on the imputed income in making its child support order calculations. However, the figures used in the DissoMaster program indicate that the “other” income attributable to husband was treated as other “taxable income” and not treated as nontaxable.

Finally, there is no merit to husband’s related contention that the trial court should have made a finding explaining why it deviated from the statutory definition of income. (See Fam. Code, § 4056.) It did not deviate from the statutory definition, since rental income is specifically included in the statutory definition. (Fam. Code, § 4058, subd. (a)(1).)

DISPOSITION

The order under review is affirmed.

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BOREN, P.J.

We concur:

NOTT, J.

DOI TODD, J.